

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 06-2731

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IN RE: JAMAL HART,  
Petitioner

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On a Petition for Writ of Mandamus from the  
United States District Court for the Eastern District of Pennsylvania  
(Related to Criminal No. 97-cr-00021)

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Submitted Under Rule 21, Fed. R. App. Pro.  
June 8, 2006

Before: RENDELL, AMBRO and ROTH, Circuit Judges.

(Filed: August 29, 2006)

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OPINION OF THE COURT

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PER CURIAM

Jamal Hart petitions this Court to issue a writ of mandamus ordering the United States District Court for the Eastern District of Pennsylvania to vacate his judgment and sentence. We will deny Hart's petition.

A jury found Hart guilty of possessing a firearm in violation of 18 U.S.C. § 922(g)(1). He was sentenced to 188 months imprisonment. This Court affirmed. See United States v. Hart, 175 F.3d 111 (3d Cir. 1999). The United States Supreme Court denied Hart's petition for writ of certiorari on October 12, 1999. See Hart v. United

States, 528 U.S. 945 (1999). Next, Hart unsuccessfully attempted to collaterally attack his sentence pursuant to 28 U.S.C. § 2255.

In May 2006, Hart filed this mandamus petition. Hart argues that his sentence was improperly enhanced under 18 U.S.C. § 924(e). Specifically, Hart states that his sentence violated his Fifth and Sixth Amendment rights in light of United States v. Booker, 543 U.S. 220 (2005), decided January 12, 2005.

Mandamus is an appropriate remedy only in the most extraordinary of situations. Sporck v. Peil, 759 F.2d 312, 314 (3d Cir. 1985). To justify such a remedy, a petitioner must show that he has (i) no other adequate means of obtaining the desired relief and (ii) a “clear and indisputable” right to issuance of the writ. See Haines v. Liggett Group, Inc., 975 F.2d 81, 89 (3d Cir. 1992)(citing Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976)). In this case, Booker does not apply retroactively because Hart’s conviction became final well before January 12, 2005. See Lloyd v. United States, 407 F.3d 608, 615-16 (3d Cir. 2005).

For these reasons, we will deny the mandamus petition.